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NOV 25 1918
JAMES D. MAHER,

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No. 745

Supreme Court of the United States

STANDARD VARNISH WORKS,
Libelant-Appellant,

against

The Steamship *Bris*,
REDERIAKTIEBOLAGET BORE,
Claimant-Appellee.

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Motion to Have the Whole Record Accompany the Question Certified by the Circuit Court of Appeals in This Case.

AND NOW COMES REDERIAKTIEBOLAGET BORE, by this counsel appearing on its behalf, and moves this Court for an order requiring the whole record in this case to be sent up to accompany the question certified.

CHARLES S. HAIGHT,
Counsel for Claimant-Appellee.

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4 SUPREME COURT OF THE UNITED STATES.

STANDARD VARNISH WORKS, Libelant-Appellant, against The Steamship *Bris*, REDERIAKTIEBOLAGET BORE, Claimant-Appellee.	October Term 1918.

Sirs:

PLEASE TAKE NOTICE that the claimant-appellee,
5 above-named, on the 25th day of November, 1918, at 12 o'clock noon, or as soon thereafter as counsel can be heard, at the Supreme Court Room in the City of Washington, District of Columbia, will move this Court, on the affidavit of Clarence Bishop Smith, Esq., hereto annexed, verified the 22nd day of November, 1918, for an order requiring the whole record in this case to be sent up to accompany the question certified to this Court.

Together with this motion, claimant-appellee serves upon the appellant a copy of the affidavit of Clarence Bishop Smith, above referred to.

Dated, New York, November 22, 1918.

6 CHARLES S. HAIGHT,
Counsel for Claimant-Appellee.

To:
Messrs. JULIUS J. FRANK,
EVERETT P. WHEELER,
Counsel for Libelant-Appellant.

SUPREME COURT OF THE UNITED STATES. 7

STANDARD VARNISH WORKS,
Libelant-Appellant,

against

The Steamship *Bris*,
REDERIAKTIEBOLAGET BORE,
Claimant-Appellee.

SOUTHERN DISTRICT OF NEW YORK, ss.:

CLARENCE BISHOP SMITH, being duly sworn, deposes and says: 8

I am a partner of Charles S. Haight, of counsel for the respondent herein.

The above case involves the question whether a ship owner is entitled to retain freight paid in advance on a shipment, where goods were not taken forward by the ship, because the shipper was unable to obtain from the United States Government a license to export.

The case is similar to *International Paper Company* v. *Schooner Gracie D. Chambers*, No. 479 on the calendar of this Court, which on November 4, 1918, was advanced for argument, the case being assigned for December 9th, but the language of the freight retention clause in the case at bar contained a material variation. It read: 9

> "Prepaid freight is to be considered as earned on shipment of the goods and is to be retained by the vessel's owners, vessel or cargo lost or not lost."

10 The clause in the *Gracie D. Chambers* case read:

> "Freight to be prepaid in full without discount, retained and irrevocable, ship and/or cargo lost or not lost."

The distinction is important, for the argument in the *Gracie D. Chambers* case turned largely on the question whether a clause should be implied that the vessel must break ground before the clause would go into effect. The statement in the case at bar that the freight is earned on shipment does away with this argument.

The case at bar also differs in its facts because the voyage was not prevented by any disability of
11 the ship, as in the *Gracie D. Chambers* case, but by a disability of the cargo, the shipper having failed to obtain the export license required by the United States Government. It is believed that there are many more cases pending of the class of the case at bar, where the sailing is prevented through a fault of the cargo, than there are where the sailing is prevented through a fault of the ship.

Claims have been made against clients of deponent on the same facts as those stated in the case at bar in connection with the sailing of three steamers, the freight involved being more than a million dollars, and deponent's firm also represents four other vessels which could not sail, where the facts are
12 similar. Deponent believes that the form of prepaid freight clause in the case at bar is the commonest one in use.

Knowing that it was of great consequence to the deponent's clients that this case should be argued at the same time that the *Gracie D. Chambers* case was heard, and believing that it was a matter of

public interest that the whole subject should come 13
before this Court at one and the same time, the claimant-appellee joined in an application to the Circuit Court of Appeals of the Second Circuit stating the above facts and, in order to enable the parties to this case to make such application, said Circuit Court of Appeals thereupon certified the proposed question of fact, and the libelant-appellant is making a motion, in which the claimant has joined, to have the argument of this case advanced and the case assigned to follow the *Gracie D. Chambers'* argument on December 9, 1918. This motion will also be submitted on November 25, 1918.

Deponent believes that the question certified will be more satisfactorily presented if the whole record 14
accompanies the question certified. The record is a short one, the facts being undisputed, and no testimony taken. It consists of the pleadings, exceptions taken to the answer, an admission that the facts stated in the answer for the purposes of this suit are admitted to be correct, final decree, opinion, notice of appeal and assignment of errors.

CLARENCE BISHOP SMITH.

Sworn to before me this
22nd day of November, 1918.

BRENT W. BLYTHE,
Notary Public,
New York County, #175. 15